

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

March 30, 2007

Elisabeth A. Shumaker
Clerk of Court

CLAUDE CARTER,

Plaintiff-Appellant,

v.

JUSTIN JONES; DEBBIE MORTON;
KEN KLINGLER; DENNIS
CUNNINGHAM; ROMONA
HOLLIER; CLIFFORD BARE;
SPENCER, Lieutenant; CABBONI,
Warden; BARGE, Lt.,

Defendants-Appellees.

No. 06-6336

(D.C. No. CIV-06-977-M)

(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BRISCOE, McKAY, and McCONNELL**, Circuit Judges.

This is a *pro se* state prisoner 42 U.S.C. § 1983 and 28 U.S.C. § 2241 appeal. The district court, adopting the magistrate judge's report and recommendation, dismissed the § 1983 claims without prejudice for failure to state a claim based on the Supreme Court's decision in *Edwards v. Balisok*, 520

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

U.S. 641 (1997), and dismissed the § 2241 claim with prejudice as duplicative of a previously filed and still outstanding § 2241 petition.

After carefully reviewing Appellant's brief, the magistrate judge's well-reasoned report and recommendation, the district court's disposition, and the record on appeal, we see no reason to question the district court's reliance upon the magistrate judge's report and recommendation. The magistrate judge correctly recommended dismissal of the § 1983 claim, which sought monetary damages for due process violations of prison disciplinary procedures, in accordance with *Edwards*. The magistrate judge also correctly interpreted Appellant's request for expungement of the disciplinary order as a habeas action. Because Appellant has already filed a § 2241 petition seeking this expungement, the district court's dismissal of this claim with prejudice was proper.

As a result, we **AFFIRM** the decision of the district court denying § 1983 relief and also deny the implied application for a certificate of appealability on the § 2241 petition. *See Montez v. McKinna*, 208 F. 3d 862, 866-869. (10th Cir. 2000). In addition, we **GRANT** Appellant's request to proceed *in forma pauperis*, and remind Appellant of his obligation to make partial payments until his filing fee has been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge